

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JUDY D.,)	2 CA-JV 2010-0061
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
TIMOTHY M., CHARLENE M., and JAKOB)	Appellate Procedure
O.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. SV2008005

Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

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K E L L Y, Judge.

¶1 After a contested severance hearing, the juvenile court terminated the parental rights of Judy D. to her son, Jakob O., born in 2007, granting the petition filed in February 2010 by the paternal grandmother and stepgrandfather (grandparents).¹ The court terminated Judy's rights based on a history of chronic substance abuse, *see* A.R.S. § 8-533(B)(3), and found that termination was in Jakob's best interests. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000) (termination must be in child's best interests). On appeal, Judy contends there was insufficient evidence to establish the statutory ground for terminating her parental rights and to support the finding that termination was in Jakob's best interests. For the reasons stated below, we affirm.

¶2 A juvenile court may terminate a parent's rights if clear and convincing evidence establishes any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 On appeal, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *See Michael J.*, 196 Ariz. 246, ¶ 20, 995 P.2d at 686. In April

¹The court also terminated the parental rights of Jakob's father, who is not a party to this appeal.

2008, the grandparents filed a petition to terminate the parents' rights to Jakob based on neglect and a history of chronic substance abuse. *See* A.R.S. § 8-533(B)(2), (3). After a contested severance hearing in July 2009, the juvenile court found the grandparents had not proven Judy had neglected Jakob, and that although they had proven she had a history of chronic substance abuse, they had not shown the condition would continue for a prolonged indeterminate period of time.² At the conclusion of the July hearing, the court told the parents that although they had “won this round,” they should not resume their “old ways” of using illegal drugs. The court stated, “you can’t put [Jakob] through this again . . . if you return to illegal drug use, and [Jakob] then becomes neglected because of that . . . [, creating] an unsafe environment, I don’t think you’re going to get a second chance.”

¶4 The grandparents filed a new petition to terminate the parents' rights in February 2010, based only on chronic substance abuse. At the conclusion of the second contested severance hearing in April 2010, at which the court took judicial notice of its finding from the first hearing that both parents had a history of chronic substance abuse prior to July 2009, the court found their substance abuse had persisted. The court then terminated both parents' rights to Jakob and placed him in the grandparents' custody. The court's decision was formalized in a May 2010 order.

²Section 8-533(B)(3) provides that a parent's rights may be terminated if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.”

¶5 To the extent Judy argues that her drug use since the July 2009 hearing “was nothing more than a relapse” involving only two instances, we reject this argument. Not only does the record show that Judy repeatedly used drugs during this time period, most notably while Jakob was home with her, but others, including Jakob’s father, abused alcohol and illegal drugs in the home on a regular basis. Although Judy acknowledges on appeal, as she did at the severance hearing, that she used marijuana in December 2009 and methamphetamine in January 2010, she nonetheless argues this “relapse began at the instigation of [Jakob’s father] and his friends and step-brother.” Yet, at the severance hearing, Judy had testified that, “I’m a grown woman. Nobody . . . made me [use drugs].”

¶6 Moreover, despite her claim that she has used illegal drugs only twice since July 2009, Judy concedes there was abundant evidence showing she had used methamphetamine “a lot more times tha[n] she had admitted to,” a fact the record supports. The father’s stepbrother attested in an affidavit that Judy had smoked methamphetamine on more than one occasion in January 2010 while Jakob was asleep in his room, explaining there was a special room in the house designated for drug use. The father also testified at the severance hearing that he and Judy had smoked methamphetamine on a daily basis between Christmas 2009 and mid-January 2010. The evidence belies Judy’s claim that “she was capable of discontinuing the drug use on a permanent basis.” In fact, Judy conceded at the severance hearing that, based on her history, she “must be” a drug addict. Not surprisingly, the court found “incredible” Judy’s testimony that she had drastically reduced her drug use. It was for the court, as

the trier of fact, to decide whether to accept Judy's testimony as true or to reject it and draw the contrary inferences it obviously drew. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶7 In addition, although Judy testified she would not permit any caretaker who smoked marijuana or used methamphetamine to care for Jakob, a witness who frequently stayed at Judy's home testified that an individual named Moony, who was a self-described alcoholic and smoked marijuana "regularly," often cared for Jakob. The record does not support Judy's suggestion on appeal that "most of the negative influences in Jakob's living environment came about because of [the father]." Rather, the record demonstrates that Judy's substance abuse affected her ability to make appropriate parenting decisions.

¶8 Judy maintains that she has remained drug-free since February 2010. But, given that she failed to maintain her sobriety after Jakob was returned to her care in July 2009, we cannot say the juvenile court erred in finding that her "drug use will continue for a prolonged indeterminate period" based on her "long history of a cycle of drug abuse, periods of sobriety and additional drug use."

¶9 Judy also argues the juvenile court "failed to weigh the best interests of [Jakob] with respect to severance and with respect to placement." To support the finding that termination is in a child's best interests, a preponderance of the evidence must show that the child either will benefit from the severance or be harmed if the parental relationship continues. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). Notably, Judy contends on appeal that if her drug use had

continued, “it would not have been in Jakob’s best interest to remain with [her].” However, the evidence is undisputed that Judy’s drug use did continue. In any event, in light of the abundant evidence that Jakob was living in a filthy and unsafe environment, surrounded by individuals, including Judy, who frequently used illegal drugs, the court correctly found he “would be harmed if allowed to remain in the home with [his parents].”

¶10 Moreover, the evidence also supports the juvenile court’s finding that Jakob is adoptable, his grandparents want to adopt him, and they have a strong bond with him. The grandmother testified that she has a good relationship with Jakob, who has some special needs as a result of having been born with only one ear. She explained that she uses sign language “as much as [she] can” to overcome Jakob’s speech difficulties, and that she has “no problem” taking care of him and raising him in a “good home, a loving home.” She and the grandfather are willing to adopt Jakob, and are able to provide for his needs. A friend of the grandparents testified that Jakob seems happy and well-cared for when he is with the grandparents, and that she has no concerns about their parenting ability. *See In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (juvenile court could consider whether current adoptive placement existed, whether child adoptable, or whether “the child[] would benefit from termination of the parent-child relationship”). Because reasonable evidence supports the court’s best interests finding, we will not disturb it.

¶11 To the extent Judy asserts the grandparents “are not the best candidates as permanent parents for Jakob,” and asks us to reverse the juvenile court’s order placing

Jakob with them, we reject this argument. With the termination of her parental rights, Judy lost standing to challenge the court's decision regarding Jakob's placement. *See Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1012 (App. 2009).

¶12 The record amply supports the juvenile court's termination of Judy's parental rights to Jakob. Therefore, we affirm.³

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

³We agree with Judy that the answering brief filed on behalf of Jakob does not comply with Rule 13(a), Ariz. R. Civ. App. P., and, therefore, we will not consider it.